

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA *ex* : CIVIL ACTION
rel, INTERNATIONAL :
 BROTHERHOOD OF ELECTRICAL :
 WORKERS, LOCAL UNION NO. 126, :
 CHRISTOPHER LEVAN :
 :
 v. : NO. 21-2980
 :
 JD ECKMAN INC., KINSLEY :
 CONSTRUCTION, INC., HERR :
 SIGNAL AND LIGHTING CO., INC :

ORDER

AND NOW, this 23rd day of May 2023, upon considering Defendants' Motions to dismiss (ECF Doc. Nos. 36, 37), Plaintiffs' Oppositions (ECF Doc. Nos. 38, 39), and for reasons in today's accompanying Memorandum, it is **ORDERED** Defendants' Motions (ECF Doc. Nos. 36, 37) are **GRANTED in part as to a stay** and **DENIED as to dismissal** finding Plaintiffs plead each Defendant violated the False Claims Act and requiring:

1. We **DENY** Defendants' Motions to dismiss for failure to state a claim;
2. We **stay** further pleadings under the primary jurisdiction doctrine given the complex questions raised in twenty-five subcontracts involving likely expertise as to the nature of the electrical work performed by the workers and seemingly better suited for agency interpretation in the first instance requiring:
 - a. Plaintiffs refer the workers classification and wage determination issues to the Department of Labor on or before **June 8, 2023** including specifically requesting the Department promptly advise the parties no later than August 11, 2023 as to its ability to timely address the referred issues;

b. The parties shall fully cooperate in Defendants' requested referral including producing all required disclosures and documents consistent with their obligations under Rule 26(a)(1)(A) including payroll records and non-privileged correspondence (along with a fulsome privilege log) to the Plaintiffs' counsel by no later than **June 23, 2023**;

c. Plaintiffs shall file a Notice of the Department's decision to accept review and likely timing should it accept review within three business days of learning the Department's decision;

d. Plaintiffs shall file a joint Memorandum not exceeding ten pages filed within ten days of the Department's decisions describing each party's position on the effect of the Department's decisions on further progress towards trial before us including whether we should appoint a Rule 53 Master to hear the evidence and prepare detailed proposed findings of fact and conclusions of law similar to our steps in *United States ex rel. International Brotherhood of Electrical Workers Local Union No. 98 v. Farfield Company*, No. 09-423.

e. Plaintiffs shall file status memoranda not exceeding two pages as to the parties' progress on **June 15, 2023, July 17, 2023, August 15, 2023, and September 15, 2023** so as to allow our timely review of withdrawing the reference and setting an Answer deadline and trial dates should the Department of Labor decline or otherwise be unable to timely address the referred issues; and,

3. The Clerk of Court shall place this matter on the **suspense** docket until further Order.



KEARNEY, J.